

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF NEVADA

3 * * *

4 RICHARD IDEN,

5 Plaintiff,

6 v.

7 ELY STATE PRISON, *et al.*,

8 Defendants.

Case No. 3:20-cv-00108-RFB-CLB

ORDER

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10 On February 18, 2020, Plaintiff, an inmate in the custody of the Nevada
11 Department of Corrections filed a notice of emergency complaint. (ECF No. 1-1). On
12 February 21, 2020, this Court issued an order directing Plaintiff to file a complaint and a
13 fully complete application to proceed *in forma pauperis* or pay the full filing fee of \$400
14 within forty-five (45) days from the date of that order. (ECF No. 3 at 2). The 45-day period
15 has now expired, and Plaintiff has not filed a complaint or an application to proceed *in*
16 *forma pauperis*, paid the full filing fee, or otherwise responded to the Court's order.

17 District courts have the inherent power to control their dockets and "[i]n the
18 exercise of that power, they may impose sanctions including, where appropriate . . .
19 dismissal" of a case. *Thompson v. Hous. Auth. of City of Los Angeles*, 782 F.2d 829, 831
20 (9th Cir. 1986). A court may dismiss an action, with prejudice, based on a party's failure
21 to prosecute an action, failure to obey a court order, or failure to comply with local rules.
22 See *Ghazali v. Moran*, 46 F.3d 52, 53-54 (9th Cir. 1995) (affirming dismissal for
23 noncompliance with local rule); *Ferdik v. Bonzelet*, 963 F.2d 1258, 1260-61 (9th Cir.
24 1992) (affirming dismissal for failure to comply with an order requiring amendment of
25 complaint); *Carey v. King*, 856 F.2d 1439, 1440-41 (9th Cir. 1988) (affirming dismissal
26 for failure to comply with local rule requiring *pro se* plaintiffs to keep court apprised of
27 address); *Malone v. U.S. Postal Service*, 833 F.2d 128, 130 (9th Cir. 1987) (affirming
28 dismissal for failure to comply with court order); *Henderson v. Duncan*, 779 F.2d 1421,

1 1424 (9th Cir. 1986) (affirming dismissal for lack of prosecution and failure to comply with
2 local rules).

3 In determining whether to dismiss an action for lack of prosecution, failure to obey
4 a court order, or failure to comply with local rules, the court must consider several factors:
5 (1) the public's interest in expeditious resolution of litigation; (2) the court's need to
6 manage its docket; (3) the risk of prejudice to the defendants; (4) the public policy favoring
7 disposition of cases on their merits; and (5) the availability of less drastic alternatives.
8 See *Thompson*, 782 F.2d at 831; *Henderson*, 779 F.2d at 1423-24; *Malone*, 833 F.2d at
9 130; *Ferdik*, 963 F.2d at 1260-61; *Ghazali*, 46 F.3d at 53.

10 Here, the Court finds that the first two factors, the public's interest in expeditiously
11 resolving this litigation and the Court's interest in managing the docket, weigh in favor of
12 dismissal. The third factor, risk of prejudice to Defendants, also weighs in favor of
13 dismissal, since a presumption of injury arises from the occurrence of unreasonable delay
14 in filing a pleading ordered by the court or prosecuting an action. See *Anderson v. Air*
15 *West*, 542 F.2d 522, 524 (9th Cir. 1976). The fourth factor—public policy favoring
16 disposition of cases on their merits—is greatly outweighed by the factors in favor of
17 dismissal discussed herein. Finally, a court's warning to a party that his failure to obey
18 the court's order will result in dismissal satisfies the "consideration of alternatives"
19 requirement. *Ferdik*, 963 F.2d at 1262; *Malone*, 833 F.2d at 132-33; *Henderson*, 779
20 F.2d at 1424. The Court's order requiring Plaintiff to file a complaint and an application
21 to proceed *in forma pauperis* or pay the full filing fee within forty-five (45) days expressly
22 stated: "IT IS FURTHER ORDERED that if Plaintiff does not timely comply with this order,
23 dismissal of this action may result." (ECF No. 3 at 2). Thus, Plaintiff had adequate
24 warning that dismissal would result from his noncompliance with the Court's order to file
25 a complaint and an application to proceed *in forma pauperis* or pay the full filing fee within
26 forty-five (45) days.

27 IT IS THEREFORE ORDERED that this action is dismissed without prejudice
28 based on Plaintiff's failure to file a complaint or an application to proceed *in forma*

1 *pauperis* or pay the full filing fee in compliance with this Court's order dated February 21,
2 2020.

3 IT IS FURTHER ORDERED that the Clerk of Court shall enter judgment
4 accordingly.

5 DATED: April 13, 2020.

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8 RICHARD F. BOULWARE, II
9 UNITED STATES DISTRICT JUDGE
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